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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,036	06/08/2001	Eyal Eliav	IR 6668-02	9 <sup>1623</sup>

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/878,036

Applicant(s)

ELIAV ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### Notice of Informal Examiner's Amendment

"Therefrom" (claim 12, line 17) has been changed to – thereof –; brackets in claim 19 changed to parentheses and "33" (claim 21, line 11) changed to – 35 --.

### ***Claim Rejections - 35 USC § 112***

1. Claims 6-9 and 13-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of "bottom surface (45) is attached to the center of said bristle carrier (21)" (claim 6, lines 3-4) is confusing because the bottom surface is the bottom of the carrier itself. – Toe – should follow "free" (claim 9, line 1). The preambles of claims 13-20 are non consistent with the claim from which they depend, as claim 12 is drawn to a method. "Bristle carrier" (claim 21, line 5) lacks antecedent. Applicant should review the claims for any additional informalities.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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2. Claims 1-5,10,12-17,19 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Calabrese (USP 6,510,575). The patent to Calabrese discloses a brush section (1) for use with a handle (H) having a conventional drive mechanism therein (see column 3, lines 26-28) and wherein the brush section includes bristle carrier comprises a generally disk-shaped first portion which is oscillated about a central axis (5) (see column 3, lines 32-35) and wherein the bristles thereof are arranged in concentric rings (see fig 2a) and further wherein the first portion of the bristle carrier has at least one (see fig 2a) and up to three (see fig 3a) fingers (which also bear bristles) extending therefrom in a direction distal from the first end of the brush section. The overall shape of the bristle carrier (the first portion with the attached "fingers") defines a bristled face which has a shape other than circular or oval. The shape shown in fig 2a can be said to be "generally egg-shaped" (claim 3) within the broadest reasonable interpretation thereof. In addition to the bristles of the "first portion" being in concentric rings, the bristles of the finger are arranged in rows (claim 10) (again see fig 2a). With regard to claim 12, the disclosed use of the brush of Calabrese would inherently involve some contact with the "gingival tissues". With regard to claim 17, the free end of the finger is arcuate (see fig 2b). With regard to claim 23, the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte, 177 USPQ 326,328 (CCPA 1973).

3. Claims 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Gruber et al (USP 6,463,615). The patent to Gruber discloses, as best shown in figure 6, a bristle carrier (26) which driven about an axis (15) and secured to a carrier support

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(14) and further wherein the front edge of the bristle carrier is convex and it extends transversely further than the upper surface of the support. With regard to claim 22, the support (14) also has a convex toe end (claim 22).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese (USP 6,510,575). The patent to Calabrese discloses the invention substantially as claimed (see paragraph #2 above) with the exception of specifying the particular radius of curvature (at least 1 mm), although the toe portion at the end of the finger is shown to be arcuate (see fig 2b). The particular radius of curvature would be obvious to one of ordinary skill depending on the desired thickness of the bristle carrier and the desired degree of the bluntness.

6. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese (USP 6,510,575) as applied to claims 10 and 19 above, and further in view of Gruber et al (USP 6,308,358). The patent to Calabrese discloses the invention substantially as claimed with the exception of the bristles of the finger being longer than those on the "first portion". The patent to Gruber discloses first disk portion (7) and a secondary bristle group (11) at the end of the brush wherein the bristle of the secondary group are longer than that of the first portion (see fig 2). It would have been obvious to

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one of ordinary skill to have modified the brush of Calabrese as such to better clean interdental spaces.

***Allowable Subject Matter***

7. Claims 6-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich  
Primary Examiner  
Art Unit 1744